

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2008-0389
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
ALEJANDRO GUARDADO-SOLORIO,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20074368 and CR-20074142

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

\_\_\_\_\_  
Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Alan L. Amann

Tucson  
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Tucson  
Attorney for Appellant

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H O W A R D, Chief Judge.

¶1 After a jury trial, appellant Alejandro Guardado-Solorio was convicted of one count of possession of a narcotic drug for sale and two counts of possession of a dangerous drug for sale. The trial court sentenced him to concurrent, mitigated terms of imprisonment, the longest of which was five years. On appeal, Guardado-Solorio argues the trial court erred in denying his motion to suppress a statement he made to police officers after being arrested. For the following reasons, we affirm.

### **Factual and Procedural Background**

¶2 In reviewing the denial of a motion to suppress evidence, we consider only the facts presented at the suppression hearing, viewing them in the light most favorable to sustaining the trial court's ruling. *State v. Wyman*, 197 Ariz. 10, ¶ 2, 3 P.3d 392, 394 (App. 2000). Guardado-Solorio was arrested following an undercover drug buy. He was then interviewed by Detective Jimenez, as well as Detective Vivaldo, who was asked to translate because Guardado-Solorio spoke primarily Spanish.

¶3 At the beginning of the interview, Vivaldo read Guardado-Solorio in Spanish his constitutional rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Vivaldo then asked if he understood these rights, and Guardado-Solorio replied that he did. Vivaldo subsequently questioned him about his involvement in drugs for approximately half an hour. During the questioning, Guardado-Solorio "readily admitted" he had been in possession of illegal drugs when he was arrested and that he sold the drugs to others.

¶4 Before trial, Guardado-Solorio moved to suppress his statements, arguing they were made involuntarily and in violation of *Miranda*. The trial court denied the

motion, finding “there was no violation of [Guardado-Solorio’s] *Miranda* rights and that [his] statement was made knowingly, intelligently, and voluntarily.” Guardado-Solorio appeals from this ruling.

### **Discussion**

¶5 Guardado-Solorio contends the trial court erred in denying his motion because he did not fully understand his rights and because the statements were involuntary. We review the trial court’s denial of the motion to suppress on either ground for an abuse of discretion. *See State v. Newell*, 212 Ariz. 389, ¶¶ 26-27, 132 P.3d 833, 841 (2006); *State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007). We review any legal conclusions de novo. *Newell*, 212 Ariz. 389, ¶ 27, 132 P.3d at 841.

#### *Miranda* Warnings

¶6 Guardado-Solorio first contends the trial court erred in failing to suppress his statements because he did not fully understand his rights. To satisfy *Miranda*, the state “must show that [the defendant] understood his rights and intelligently and knowingly relinquished those rights before any custodial interrogation began.” *State v. Tapia*, 159 Ariz. 284, 286-87, 767 P.2d 5, 7-8 (1988). “A defendant does not even have to expressly state that he will waive his rights, so long as he answers the questions freely and does not attempt to terminate the interrogation.” *State v. Stabler*, 162 Ariz. 370, 376, 783 P.2d 816, 822 (App. 1989). In determining whether a defendant waived his rights, a trial court must “focus on the particular facts and circumstances of a case, ‘including the defendant’s background, experience and conduct.’” *State v. Rivera*, 152 Ariz. 507, 513,

733 P.2d 1090, 1096 (1987), *quoting State v. Montes*, 136 Ariz. 491, 495, 667 P.2d 191, 195 (1983).

¶7 In this case, before the interview started, Detective Vivaldo read the *Miranda* warnings in Spanish to Guardado-Solorio from a card furnished by the police department. Vivaldo is a native Spanish speaker who took a course at the University of Arizona in Spanish language court interpreting and also has worked as an interpreter at the juvenile court. Vivaldo asked Guardado-Solorio if he understood his rights, and Guardado-Solorio responded that he did. Guardado-Solorio also did not appear confused when Detective Vivaldo proceeded to interview him. Vivaldo stated that Guardado-Solorio never said he was “uncomfortable, tired, didn’t understand, [or] anything like that” at any time during the interview and “understood what we were talking about . . . [and] . . . why he was there.”

¶8 At the hearing on his motion to suppress, however, Guardado-Solorio presented a doctor who had interviewed him in Spanish and concluded that he had learning disabilities, lacked education, was unfamiliar with the United States legal system, and therefore “most likely” did not understand the *Miranda* warnings even though they were presented to him in his native language of Spanish. Based primarily on this expert’s testimony, Guardado-Solorio argues the trial court abused its discretion in concluding he had knowingly and intelligently waived his rights.

¶9 But, even assuming Guardado-Solorio’s understanding of the *Miranda* warnings is a proper subject for the doctor’s opinion testimony, the trial court is in the best position to assess witness credibility and otherwise weigh the evidence presented at

the suppression hearing, and we defer to its implicit decision in this instance to give less weight to the expert's testimony than that of the other witnesses. *See State v. Estrada*, 209 Ariz. 287, ¶ 22, 100 P.3d 452, 457 (App. 2004). Detective Vivaldo's testimony amply supported the conclusion that Guardado-Solorio understood his rights. The *Miranda* warnings were read in his native language, and he responded affirmatively when asked if he understood them. He also understood the questions asked during his interrogation and answered them appropriately. Thus, considering the totality of the circumstances and the role of the trial court in assessing witness credibility, we cannot say the court abused its discretion in finding Guardado-Solorio had understood his rights.

¶10 Guardado-Solorio also contends he did not make a knowing, intelligent, and voluntary waiver of his rights. In *Rivera*, 152 Ariz. at 513, 733 P.2d at 1096, our supreme court concluded that a defendant who was a "Mexican national with limited education and no knowledge of English" understood his constitutional rights when he stated he understood and waived his rights after a bilingual police detective had read his rights to him in Spanish from a *Miranda* card. The facts established at the hearing in this case are similar to those in *Rivera*. We thus conclude the trial court did not abuse its discretion in finding Guardado-Solorio had knowingly and intelligently waived his rights. *See also United States v. Martinez*, 588 F.2d 1227, 1234-35 (9th Cir. 1978) (defendant "knowingly and intelligently" waived his rights, despite their having been spoken to him in different Spanish dialect, where there was testimony that defendant "appeared to understand the *Miranda* warnings as they were read" and "continued to converse in Spanish with the officer who had read him the warnings").

## Voluntariness of Statements

¶11 Guardado-Solorio finally claims his statements were involuntary, because of his age, “limited intellectual functioning,” inability to speak English, alleged lack of understanding of his rights, foreign nationality, and unfamiliarity with our criminal justice system. “Confessions are presumed to be involuntary, and the state has the burden of proof by a preponderance of the evidence to show that a confession was voluntary and not the product of physical or psychological coercion.” *State v. Amaya-Ruiz*, 166 Ariz. 152, 164, 800 P.2d 1260, 1272 (1990). To determine whether the state has met this burden, a trial court must consider “the totality of the circumstances,” which may include the defendant’s age, educational level, previous dealings with the police, length of interrogation, and the language in which the warnings were given. *State v. Scholtz*, 164 Ariz. 187, 189, 791 P.2d 1070, 1072 (App. 1990). Nevertheless, although personal circumstances, such as intelligence, age, and educational level can be considered in evaluating voluntariness, “the critical element necessary to such a finding is whether police conduct constituted overreaching.” *State v. Stanley*, 167 Ariz. 519, 524, 809 P.2d 944, 949 (1991).

¶12 Here, Guardado-Solorio alleges his statements were involuntary because Vivaldo failed to take sufficient care in ensuring he understood the *Miranda* warnings. He also contends his age, limited intelligence, inability to speak English, and lack of familiarity with the United States justice system affected the voluntariness of his statements. We have already concluded the trial court did not err in finding Guardado-Solorio understood his *Miranda* warnings. And, in light of the circumstances of his

confession, we cannot say there was overreaching or coercion by the officers—the critical element in determining whether a confession is voluntary. *See id.* Guardado-Solorio was not questioned for a long period of time. There is no evidence that he was held in prolonged or deliberate isolation or that high-pressure interrogation tactics were used. Thus, the trial court did not abuse its discretion in finding Guardado-Solorio’s statements had been voluntary and therefore denying his motion to suppress.

### **Disposition**

¶13 We affirm Guardado-Solorio’s convictions and the sentences imposed.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge